

DETAILED ACTION

This communication is a first Office Action Non-Final rejection on the merits.

Claims 1-37, as originally filed, are currently pending and have been considered below.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 9, 10, and 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 9 recites the limitation "the packaging" in Line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 15, recites the limitation "said consumer products" in Line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 10, and 16-18 depend from Claims 9 and 15 and therefore contain the same deficiencies.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Wal-Mart (March 31, 2001).

As per Claim 1, Wal-Mart discloses a method for marketing products based on the intended use of said products, the method comprising classifying a plurality of products into a plurality of use groups based on the intended use of said products, then designating each of said use groups by one or more icons specific to each of said use groups, And displaying said products such that consumer can select one or more products in each use groups based on the one or more icons (Page 1, discloses a plurality of products being classified by there intended use such as automotive, sporting goods, apparel, home, and baby. Each icon for each category such as home or books may be selected by the customer. After a customer has clicked on an icon via the website, the products classified under the selected category will be provided).

As per Claim 2, Wal-Mart discloses one or more icons designating said products using a combination of identifying features selected from the group consisting of text, graphics, color, texture, and a combination thereof (Page 1, discloses the icons representing the use categories in textual form (i.e., electronics, toys, home)).

As per Claim 3, Wal-Mart discloses each one of said one or more icons comprises a foreground and a background, wherein said foreground comprises text, and graphics corresponding to a particular use group, said foreground text and graphics being in one or more colors, and wherein said background comprises background graphics in one or more background colors, said one or more background colors differing from said one or more foreground colors (Page 1, discloses the foreground

comprising of text representing the plurality of use categories (i.e. electronics, home, toys); and discloses the foreground text color differing from the background color in order to make the text visible to the customer when viewing the website).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2003) in view of nonfunctional descriptive material, and in further view of design choice.

As per Claim 4, Wal-Mart discloses a first icon representing a first use group (Page 1, discloses the first use group as “electronic”); a second icon representing a second use group (Page 1, discloses the second use group as “movies”); and a third icon representing a third use group (Page 1, discloses the third use group as “toys”). However, Wal-Mart does not expressly show the claimed data including: the first icon foreground comprising “SOF SOLE” and “COMFORT”; and the second icon foreground comprising “SOF SOLE” and “PERFORMANCE”; and the third icon foreground comprising “SOF SOLE” and “OUTDOOR”.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The displaying of the use

groups would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms or patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the step of displaying the use groups using any type of data. Because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claim 5, Wal-Mart discloses a first use group (Page 1, discloses the first use group as “electronic”) and sub-groups (Page 1, discloses the sub-groups of the first use group as digital photography, computers & peripherals, tv, dvd & video, portable audio, personal electronics, and phones); a second use group (Page 1, discloses the second use group as “movies”) and sub-groups (Page 1, discloses the sub-groups of the second use group as dvd movies and vhs movies); a third use group (Page 1, discloses the third use group as “toys”) and sub-groups (Page 1, discloses the sub-groups of the third use group as pools & outdoor play, preschool & infant, electronic toys & learning, video games, dolls, and construction). However, Wal-Mart does not expressly show the claimed data including: first use group comprising “Comfort Cushion” and “Comfort Light” sub-groups; second use group comprising “Performance Cushion” and “Performance Light” sub-groups; and third use group comprising “Outdoor Cushion” and “Outdoor Light” sub-groups.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The displaying of the use groups and sub-groups would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms or patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the step of displaying the use groups and sub-groups using any type of data. Because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claim 6, Wal-Mart discloses one or more background colors belong to the first, second, and third icon (Page 1, discloses the background color differing from the foreground color of the icons designation the use groups in order to make the icons visible to the customer when using the website). However, Wal-Mart does not expressly disclose the background colors for each of said first icon, second icon, and third icon are different. It would have been an obvious matter of design choice to modify the background colors for each of said first icon, second icon, and third icon to be of different colors since applicant has not disclosed that a background having different colors solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any other type of variation of a background.

As per Claim 7, Wal-Mart discloses a background for the foreground text (Page 1, discloses the background color differing from the foreground color of the icons designating the use groups in order to make the icons visible to the customer when using the website). However, Wal-Mart does not expressly disclose the background graphics comprising a foot, a number, and at least one semi-circle in one or more colors, said at least one semi-circle providing the background for said foreground text. It would have been an obvious matter of design choice to modify the background graphics for the foreground text to be a foot, a number, and at least one semi-circle in one or more colors since applicant has not disclosed that the background graphics having a foot, a number, and at least one semi-circle in one or more colors solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any other type or variation of the background graphics.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2003) in view of Examiner's Official Notice.

Wal-Mart discloses products comprising footwear-related products, said footwear-related products comprising of shoes (Page 2, discloses "shoes" being a use category). However, Wal-Mart fails to expressly disclose said footwear-related products comprising socks, insoles, and shoe-care related products. Examiner takes Official Notice that it is old and well known in the art of footwear to sell insoles, socks, and shoe-care products along with footwear to provide special insoles and maintenance products for footwear. Therefore, it would be obvious to one skilled in the art of footwear merchandising to modify Wal-Mart with socks, insoles, and shoe-care related products

as taught by Examiner's Official Notice in order to sell these items in a similar fashion as shoes.

8. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Shaylor (4,132,309).

As per Claim 9, Wal-Mart discloses the claimed invention as applied to Claim 2, above. However, Wal-Mart fails to explicitly disclose utilizing the packaging of said products to represent each of said use groups.

Shaylor discloses a combination label, hosiery package, and hanger for hosiery with the concept of utilizing the packaging of said products to represent each of said use groups and distinguish each of said use groups from one another (Col. 1, Lines 55-68, discloses a package comprising a label configured to provide product identification information). It would be obvious to one of ordinary skill in the art that a label can be configured to provide the use group of the product as part of the product identification information.

Therefore, from the teaching of Shaylor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include utilizing the packaging of said products to represent each of said use groups as taught by Shaylor in order to aid the customer in identifying and selecting products with shopping in a retail store.

As per Claim 10, Wal-Mart discloses the claimed invention as applied to Claim 9, above. However, Wal-Mart fails to explicitly disclose packaging.

Shaylor discloses a combination label, hosiery package, and hanger for hosiery with the concept of packaging comprising product information, the icon specific to that product use group, packaging graphics, and a packaging background (Col. 1, Lines 55-68, discloses a package comprising a label configured to provide graphics and product identification information). It would be obvious to one of ordinary skill in the art that a label can be configured to provide the use group of the product as part of the product identification information.

Therefore, from the teaching of Shaylor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include packaging as taught by Shaylor in order aid the customer in identifying and selecting products with shopping in a retail store.

9. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Nook et al. (7,175,034).

As per Claim 11, Wal-Mart discloses the claimed invention as applied to Claim 1, above. However, Wal-Mart fails to explicitly disclose a point-of-sale display.

Nook et al. discloses a method for displaying products with the concept of displaying being performed using a point-of-sale display (Abstract, discloses a point of purchase display stand for displaying products).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include a point-of-sale

display as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

As per Claim 12, Wal-Mart discloses the claimed invention as applied to Claim 11, above. However, Wal-Mart fails to explicitly disclose a point-of-sale display.

Nook et al. discloses a method for displaying products with the concept of a point-of-sale display comprising a vertical member and a plurality of horizontal protrusions extending from said vertical member (Col. 1, Lines 61-67; Col. 2, Lines 1-23, discloses the display including a vertical back wall that provides shelves to be attached horizontally to the back wall).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include a point-of-sale display as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

As per Claim 13, Wal-Mart discloses the claimed invention as applied to Claim 12, above. However, Wal-Mart fails to explicitly disclose a point-of-sale display with a vertical member.

Nook et al. discloses a method for displaying products with the concept of a vertical member comprising a wall, rod, or stand (Col. 1, Lines 61-67; Col. 2, Lines 1-23, discloses a vertical back wall).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of

providing categories for a plurality of products of Wal-Mart to include a point-of-sale display with a vertical member as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

As per Claim 14, Wal-Mart discloses the claimed invention as applied to Claim 12, above. However, Wal-Mart fails to explicitly disclose a point-of-sale display with horizontal protrusions.

Nook et al. discloses a method for displaying products with the concept of horizontal protrusions comprising shelves, hooks, rods, hangers, Velcro, or tape (Col. 1, Lines 61-67; Col. 2, Lines 1-23, discloses the shelves being attached horizontally to the back wall).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include a point-of-sale display with horizontal protrusions as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

10. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Nook et al. (7,175,034) and in further view of Mazzorato (5,174,537).

As per Claim 15, the Wal-Mart and Nook et al. combination discloses the claimed invention as applied to Claim 11, above. However, the combination fails to explicitly disclose a main information guide.

Mazzorato discloses a support for price marker signs with the concept of displaying a main information guide to assist consumer selection of said consumer products wherein said main information guide comprises said one or more icons and printed information conveying the correspondence of said one or more icons to said respective use groups (Abstract, discloses a sign that may be attached to a display. Col. 2, Lines 36-40, discloses the sign containing a blank writable surface. Col. 2, Lines 50-55, discloses the sign that contains a blank writable surface is used to separate the displayed products by size or model).

Therefore, from the teaching of Mazzorato, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wal-Mart and Nook et al. combination to include a main information guide as taught by Mazzorato in order to aid a customer in selecting the appropriate product by separating the products by use using an information guide.

As per Claim 16, the Wal-Mart and Nook et al. combination discloses the claimed invention as applied to Claim 15, above. However, the combination fails to explicitly disclose a main information guide.

Mazzorato discloses a support for price marker signs with the concept of the main information guide being situated on or near said point-of-sale display (Abstract, discloses a sign which is suitable for being hung from the horizontal rail of a display).

Therefore, from the teaching of Mazzorato, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wal-Mart and Nook et al. combination to include a main information guide as taught by Mazzorato in

order to aid a customer in selecting the appropriate product by separating the products by use using an information guide.

11. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Nook et al. (7,175,034) and in further view of Mazzorato (5,174,537) and Hunter (US 2002/0156858).

As per Claim 17, the Wal-Mart, Nook et al., and Mazzorato combination discloses the claimed invention as applied to Claim 16, above. However, the combination fails to explicitly disclose an electronic point-of-sale display.

Hunter discloses a system that provides retail stores with point of purchase displays with the concept of a point-of-sale display comprising an electronic display ([0006] discloses a point of purchase display being electronic).

Therefore, from the teaching of Hunter, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include an electronic point-of-sale display as taught by Hunter in order to provide convenience and ease when updating the display to reflect current product information.

As per Claim 18, the Wal-Mart, Nook et al., and Mazzorato combination discloses the claimed invention as applied to Claim 17, above. However, the combination fails to explicitly disclose an electronic point-of-sale display.

Hunter discloses a system that provides retail stores with point of purchase displays with the concept of the electronic display comprising a digital or computerized display, said digital or computerized display comprising a screen and a plurality of images arrayed on said screen displaying said products and said main information

guide ([0033] discloses an electronic display comprising a flat screen where [0049] split screen images may be displayed),

Therefore, from the teaching of Hunter, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include an electronic point-of-sale display as taught by Hunter in order to provide convenience and ease when updating the display to reflect current product information.

12. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Shaylor (4,132,309) and in further view of Nook et al. (7,175,034), and Mazzorato (5,174,537).

As per Claim 19, Wal-Mart discloses a method for marketing consumer footwear-related products based on the intended use of said products, the method comprising: classifying a plurality of footwear-related products into a plurality of use groups based on the intended use of said products (Page 2, discloses a plurality of footwear products being classified by there intended use such as men's, women's, cold weather, slippers, and dance shoes); and designating each of said use groups with one or more icons specific to each of said use groups (Page 2, discloses each use groups being designated by an icon which can be selected by a customer by clicking on the appropriate icon via website and a list products classified under that group will be displayed). However, Wal-Mart fails to explicitly disclose labeling the products with the use groups, displaying the products at a point-of-sale-display, and displaying a main information guide.

Shaylor discloses a combination label, hosiery package, and hanger for hosiery with the concept of utilizing the packaging of said products to represent each of said use groups and distinguish each of said use groups from one another (Col. 1, Lines 55-68, discloses a package comprising a label configured to provide product identification information). It would be obvious to one of ordinary skill in the art that a label can be configured to provide the use group of the product as part of the product identification information.

Therefore, from the teaching of Shaylor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include utilizing the packaging of said products to represent each of said use groups as taught by Shaylor in order to aid the customer in identifying and selecting products with shopping in a retail store.

Nook et al. discloses a method for displaying products with the concept of displaying said products at a point-of-sale display (Abstract, discloses a point of purchase display stand for displaying products).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of the Wal-Mart and Shaylor combination to include a point-of-sale display as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

Mazzorato discloses a support for price marker signs with the concept of the main information guide that provides said one or more icons such that a consumer can

select one or more products in each use group based on the one or more icons (Abstract, discloses a sign that may be attached to a display. Col. 2, Lines 36-40, discloses a sign containing a blank writable surface. Col. 2, Lines 50-55, discloses the sign that contains a blank writable surface is used to separate the displayed products by size or model).

Therefore, from the teaching of Mazzorato, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wal-Mart, Shaylor, and Nook et al. combination to include a main information guide as taught by Mazzorato in order to aid a customer in selecting the appropriate product by separating the products by use using an information guide.

As per Claim 20, Wal-Mart discloses the claimed invention as applied to Claim 19, above. However, Wal-Mart fails to explicitly disclose a main information guide.

Mazzorato discloses a support for price marker signs with the concept of a main information guide that is located proximally to said products (Abstract, discloses a sign which is suitable for being hung from the horizontal rail of a display for products).

Therefore, from the teaching of Mazzorato, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include a main information guide as taught by Mazzorato in order to aid a customer in selecting the appropriate product by separating the products by use using an information guide.

13. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Shaylor (4,132,309) and in further view of Nook et al.

(7,175,034), and Mazzorato (5,174,537) as applied to Claim 19, above, and in further view of Examiner's Official Notice.

Wal-Mart discloses products comprising footwear-related products, said footwear-related products comprising of shoes (Page 2, discloses "shoes" being a use category). However, Wal-Mart fails to expressly disclose said footwear-related products comprising socks, insoles, and shoe-care related products. Examiner takes Official Notice that it is old and well known in the art of footwear to sell insoles, socks, and shoe-care products along with footwear to provide special insoles and maintenance products for footwear. Therefore, it would be obvious to one skilled in the art of footwear merchandising to modify the combination of Wal-Mart, Shaylor, Nook et al., and Mazzorato with socks, insoles, and shoe-care related products as taught by Examiner's Official Notice in order to sell these items in a similar fashion as shoes.

14. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Shaylor (4,132,309) and in further view of Nook et al. (7,175,034), Mazzorato (5,174,537), and nonfunctional descriptive material.

Wal-Mart discloses use groups (Page 1, discloses the use groups as "electronics, movies, toys, and home") and sub-groups (Page 1, discloses the sub-groups as digital photography, computers & peripherals, tv, dvd movies, vhs movies, pools & outdoor play, preschool & infant, appliances, and kitchen). However, Wal-Mart does not expressly show the claimed data including: use groups comprising "Comfort", "performance" and "Outdoor", and said use groups comprising "Comfort Cushion",

"Comfort Light", "Performance Cushion", "Performance Light", "Outdoor Cushion" and "Outdoor Light" sub-groups.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The displaying of the use groups and sub-groups would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the step of displaying the use groups and sub-groups using any type of data. Because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

15. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Shaylor (4,132,309) and in further view of Nook et al. (7,175,034), Mazzorato (5,174,537), and design choice.

As per Claim 23, Wal-Mart discloses one or more icons each comprise a foreground and a background, said foreground comprising foreground text, and a background (Page 1, discloses the foreground comprising of text representing the plurality of use categories (i.e. electronics, home, toys); and discloses the foreground text color differing from the background color in order to make the text visible to the customer when viewing the website). However, Wal-Mart does not expressly disclose a

foreground comprising of one or more graphics, and a background comprising text and one or more graphics. It would have been obvious matter of design choice to modify the icons to have a foreground comprising of one or more graphics and a background comprising text and one or more graphics since applicant has not disclosed that a foreground and background comprising of text and one or more graphics solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any other type of variation of the icons.

As per Claim 24, Wal-Mart discloses a background for the foreground text comprising the name of the use group for that product (Page 1, discloses the background color differing from the foreground color of the icons designating the use groups in order to make the icons visible to the customer when using the website). However, Wal-Mart does not expressly disclose the foreground text comprising "SOF SOLE", and wherein said one or more background graphics comprises a foot, a number, and at least one semi-circle of one or more colors, said at least one semi-circle providing the background for said foreground text. It would have been an obvious matter of design choice to modify the foreground text and background to have the foreground text comprising "SOF SOLE" and the background graphics comprising of a foot, a number, and at least one semi-circle of one or more colors since applicant has not disclosed that the foreground text comprising "SOF SOLE" and the background graphics comprising a foot, a number, and at least one semi-circle of one or more colors solves any stated problem or is for any particular purpose and it appears that the

invention would perform equally well with any other type of background and foreground text.

16. Claims 25, 26, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Mazzorato (5,174,537) and in further view of Shaylor (4,132,309).

As per Claim 25, Wal-Mart discloses a system for selling consumer goods based on the intended use of said goods, the system comprising: a plurality of use groups based on the intended use of said goods ; and a display for said good classified into said plurality of use groups (Page 1, discloses a plurality of products being classified by there intended use such as automotive, sporting goods, apparel, home, and baby. Each icon for each category such as home or books may be selected by the customer. After a customer has clicked on an icon via the website, the products classified under the selected category will be displayed). However, Wal-Mart fails to explicitly disclose an information guide and product packaging information.

Mazzorato discloses a support for price marker signs with the concept of at least one information guide depicting said use groups, wherein said use groups are represented by one or more icons specific to each of said use groups (Abstract, discloses a sign that may be attached to a display. Col. 2, Lines 36-40. discloses the sign containing a blank writable surface. Col. 2, Lines 50-55, discloses the sign that contains a blank writable surface is used to separate the displayed products by size or model).

Therefore, from the teaching of Mazzorato, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include a main information guide as taught by Mazzorato in order to aid a customer in selecting the appropriate product by separating the products by use using an information guide.

Shaylor discloses a combination label, hosiery package, and hanger for hosiery with the concept of product packaging information (Col. 1, Lines 55-68, discloses a package comprising a label configured to provide graphics and product identification information).

Therefore, from the teaching of Shaylor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wal-Mart and Mazzorato combination to include packaging as taught by Shaylor in order aid the customer in identifying and selecting products with shopping in a retail store.

As per Claim 26, Wal-Mart discloses consumer goods as footwear-related products (Page 2, discloses "shoes" being a use category).

As per Claim 28, Wal-Mart discloses each one of said one or more icons designate said use groups using a combination of identifying features selected from the group consisting of text, graphics, color, texture, and a combination thereof (Page 1, discloses the icons representing the use categories in textual form (i.e., electronics, toys, home)).

As per Claim 29, Wal-Mart discloses each one of said one or more icons comprises a foreground and a background, wherein said foreground comprises text,

and graphics corresponding to a particular use group, said foreground text and graphics being in one or more colors, and wherein said background comprises background graphics in one or more background colors, said one or more background colors differing from said one or more foreground colors (Page 1, discloses the foreground comprising of text representing the plurality of use categories (i.e. electronics, home, toys); and discloses the foreground text color differing from the background color in order to make the text visible to the customer when viewing the website).

17. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Mazzorato (5,174,537) and Shaylor (4,132,309) as applied to Claim 26, above, and in further view of Examiner 's Official Notice.

Wal-Mart discloses products comprising footwear-related products, said footwear-related products comprising of shoes (Page 2, discloses "shoes" being a use category). However, Wal-Mart fails to expressly disclose said footwear-related products comprising socks, insoles, and shoe-care related products. Examiner takes Official Notice that it is old and well known in the art of footwear to sell insoles, socks, and shoe-care products along with footwear to provide special insoles and maintenance products for footwear. Therefore, it would be obvious to one skilled in the art of footwear merchandising to modify the combination of Wal-Mart, Mazzorato and Shaylor with socks, insoles, and shoe-care related products as taught by Examiner's Official Notice in order to sell these items in a similar fashion as shoes.

18. Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Mazzorato (5,174,537) and in further view of Shaylor (4,132,309) and nonfunctional descriptive material.

As per Claim 30, Wal-Mart discloses a first icon representing a first use group (Page 1, discloses the first use group as "electronic"); a second icon representing a second use group (Page 1, discloses the second use group as "movies"); and a third icon representing a third use group (Page 1, discloses the third use group as "toys"). However, Wal-Mart does not expressly show the claimed data including: the first icon foreground comprising "Comfort"; and the second icon foreground comprising "Performance"; and the third icon foreground comprising "Outdoor".

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The displaying of the use groups would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms or patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the step of displaying the use groups using any type of data. Because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claim 31, Wal-Mart discloses a first use group (Page 1, discloses the first use group as "electronic") and sub-groups (Page 1, discloses the sub-groups of the first use group as digital photography, computers & peripherals, tv, dvd & video, portable audio, personal electronics, and phones); a second use group (Page 1, discloses the second use group as "movies") and sub-groups (Page 1, discloses the sub-groups of the second use group as dvd movies and vhs movies); a third use group (Page 1, discloses the third use group as "toys") and sub-groups (Page 1, discloses the sub-groups of the third use group as pools & outdoor play, preschool & infant, electronic toys & learning, video games, dolls, and construction). However, Wal-Mart does not expressly show the claimed data including: first sub-groups comprising "Comfort Cushion" and "Comfort Light"; second sub-groups comprising "Performance Cushion" and "Performance Light"; and third sub-groups comprising "Outdoor Cushion" and "Outdoor Light".

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The displaying of the use groups and sub-groups would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to perform the step of displaying the use groups and sub-groups using any type of data. Because such data does not functionally relate to

the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per Claim 32, Wal-Mart discloses the claimed invention as applied to Claim 30, above. However, Wal-Mart fails to explicitly disclose an information guide and product packaging.

Mazzorato discloses a support for price marker signs with the concept of a main information guide that is located proximal to said goods (Abstract, discloses a sign which is suitable for being hung from the horizontal rail of a display for products).

Therefore, from the teaching of Mazzorato, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of providing categories for a plurality of products of Wal-Mart to include a main information guide as taught by Mazzorato in order to aid a customer in selecting the appropriate product by separating the products by use using an information guide.

Shaylor discloses a combination label, hosiery package, and hanger for hosiery with the concept of product packaging comprising one of said icons, product information, and packaging graphics.(Col. 1, Lines 55-68, discloses a package comprising a label configured to provide graphics and product identification information). It would be obvious to one of ordinary skill in the art that a label can be configured to provide the use group of the product as part of the product identification information. Shaylor does not expressly show the claimed data including: a packaging background color, wherein said packaging background color being the same color as said one or more icon background colors.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The displaying of the product packaging would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, from the teaching of Shaylor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wal-Mart and Mazzorato combination to include product packaging as taught by Shaylor in order aid the customer in identifying and selecting products with shopping in a retail store.

19. Claims 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Mazzorato (5,174,537) and in further view of Shaylor (4,132,309) and Nook et al. (7,175,034).

As per Claim 33, the Wal-Mart, Mazzorato, and Shaylor combination discloses the claimed invention as applied to Claim 25, above. However, the combination fails to explicitly disclose a point-of-sale display.

Nook et al. discloses a method for displaying products with the concept of a point-of-sale display (Abstract, discloses a point of purchase display stand for displaying products), said point-of-sale display comprising a vertical member and a plurality of horizontal protrusions extending from said vertical member (Col. 1, Lines 61-67; Col. 2, Lines 1-23, discloses the display including a vertical back wall that provides shelves to be attached horizontally to the back wall).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include a point-of-sale display as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

As per Claim 34, the Wal-Mart, Mazzorato, and Shaylor combination discloses the claimed invention as applied to Claim 33, above. However, the combination fails to explicitly disclose a point-of sale display comprising a vertical member.

Nook et al. discloses a method for displaying products with the concept of a vertical member comprising a wall, rod, or stand (Col. 1, Lines 61-67; Col. 2, Lines 1-23, discloses a vertical back wall).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include a point-of-sale display comprising a vertical member as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

As per Claim 35, the Wal-Mart, Mazzorato, and Shaylor combination discloses the claimed invention as applied to Claim 33, above. However, the combination fails to explicitly disclose a point-of-sale display comprising horizontal protrusions.

Nook et al. discloses a method for displaying products with the concept of horizontal protrusions comprising shelves, hooks, rods, hangers, Velcro, or tape (Col. 1, Lines 61-67; Col. 2, Lines 1-23, discloses the shelves being attached horizontally to the back wall).

Therefore, from the teaching of Nook et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include a point-of-sale display comprising horizontal protrusions as taught by Nook et al. in order to provide access to the products when a customer shops in a retail store.

20. Claims 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wal-Mart (March 31, 2001) in view of Mazzorato (5,174,537) and in further view of Shaylor (4,132,309), Nook et al. (7,175,034), and Hunter (US 2002/0156858).

As per Claim 36, the Wal-Mart, Mazzorato, Shaylor, and Nook et al. combination discloses the claimed invention as applied to Claim 33, above. However, the combination fails to explicitly disclose an electronic point-of-sale display.

Hunter discloses a system that provides retail stores with point of purchase displays with the concept of a point-of-sale display comprising an electronic display ([0006] discloses a point of purchase display being electronic).

Therefore, from the teaching of Hunter, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include an electronic point-of-sale display as taught by Hunter in order to provide convenience and ease when updating the display to reflect current product information.

As per Claim 37, the Wal-Mart, Mazzorato, Shaylor, and Nook et al. combination discloses the claimed invention as applied to Claim 36, above. However, the combination fails to explicitly disclose an electronic point-of-sale display.

Hunter discloses a system that provides retail stores with point of purchase displays with the concept of the electronic display comprising a digital or computerized

display, said digital or computerized display comprising a screen and a plurality of images arrayed on said screen displaying said products and said main information guide ([0033] discloses an electronic display comprising a flat screen where [0049] split screen images may be displayed),

Therefore, from the teaching of Hunter, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include an electronic point-of-sale display as taught by Hunter in order to provide convenience and ease when updating the display to reflect current product information.

Conclusion

21. The applicant is reminded that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gouldson (5,944,237) discloses a method and system for color coding the sizes of garments to be displayed and sold in a retail clothing or department store which has a plurality of clothing lines for a plurality of consumer groups.

Gummer (5,469,959) discloses a package for hosiery.

Oakley (6,032,793) discloses a package for an article of hosiery including a card having a body and a header adjacent the body.

Marshall et al. (5,285,566) discloses a system for producing and distributing index coded hangers to a plurality of locations, wherein the index indicia is correlated to the characteristics of the garment.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FONYA LONG whose telephone number is (571)270-5096. The examiner can normally be reached on Mon/Fri [7:30am/5:00pm EST] with First Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on (571) 270-3033. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/
Primary Examiner, Art Unit 3627

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FML

